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25 UNITED STATES DISTRICT COURT

26 NORTHERN DISTRICT OF CALIFORNIA

27 OAKLAND DIVISION

28 IN RE: PETITION OF JENNIFER GRANICK) Case No. 16-MC-80206 PJH
29 AND RIANA PFEFFERKORN TO UNSEAL) **ORDER ON**
30 TECHNICAL-ASSISTANCE ORDERS AND) **STIPULATION TO STAY CASE;**
31 MATERIALS) **[PROPOSED ORDER]**

1 Subject to the Court's approval, Petitioners Jennifer Granick and Riana Pfefferkorn and
2 Interested Party the United States of America, by and through its counsel Assistant United States
3 Attorney Kyle F. Waldinger, Trial Attorney Laura-Kate Bernstein, and Senior Counsel Louisa K.
4 Marion, HEREBY STIPULATE as follows:

5 1. On December 18, 2018, Magistrate Judge Kandis A. Westmore issued a report and
6 recommendation to deny the Petition filed in September 2016. *See* dkt. 58. On the same day, the case
7 was re-assigned to the Honorable Phyllis J. Hamilton. *See* dkt. 59.

8 2. On January 16, 2019, the Petitioners filed a Notice of Motion and Motion for *De Novo*
9 Determination of Dispositive Matter Referred to Magistrate Judge, and related filings. *See* dkts. 62-64.
10 The Petitioners noticed their motion for a hearing on March 20, 2019.

11 3. Pursuant to the Court's Local Rules, the United States' response to the Motion is due by
12 January 30, 2019.

13 4. At midnight on December 22, 2018, the continuing resolution that was funding the
14 Department of Justice (DOJ) expired and appropriations to DOJ lapsed. The date when funding will be
15 restored by Congress has not been established.

16 5. The Anti-Deficiency Act, 31 U.S.C. § 1341, as construed by the Attorney General,
17 provides that in the absence of appropriated funds no obligation can be incurred except for the protection
18 of life and property, the orderly suspension of operations, or as otherwise authorized by law. This
19 means that absent an appropriation, DOJ attorneys are prohibited from working, even on a volunteer
20 basis, "except for emergencies involving the safety of human life or the protection of property." 31
21 U.S.C. § 1342. Accordingly, each United States Attorney has been instructed to designate those
22 attorneys and support staff whose work is necessary to sustain legal operations essential to the safety of
23 human life and the protection of property.

24 6. DOJ has issued guidance which gives priority to continuing work on criminal cases.
25 While undersigned counsel for the United States have not been furloughed, they are only permitted to
26 work on certain matters that fall within the statutory framework outlined above. Counsel for the United
27 States have been informed by their respective supervisors that this matter does not fall with the statutory
28 framework, and that they are not permitted to work on the matter during the lapse in appropriations.

1 7. The United States therefore requests a stay of this case until Congress has restored
2 appropriations to DOJ. Plaintiffs do not oppose such a stay.

3 8. In the event the Court declines to stay the case, an attorney from the USAO will be
4 authorized to work on the case. However, AUSA Waldinger is currently preparing for a large (\$8
5 million) insider-trading case set to proceed to trial before the Honorable Haywood S. Gilliam, Jr., on
6 February 19, 2019. In addition, Senior Counsel Marion will be out of the office for numerous days in
7 February 2019 and is preparing a complex matter for indictment and for a related extradition proceeding.
8 Furthermore, Trial Attorney Bernstein is scheduled to go to trial in early March. Given the obligations
9 attendant to these matters, even if AUSA Waldinger, Senior Counsel Marion, and Trial Attorney
10 Bernstein received permission to work on this case, they would nevertheless need to seek an extension
11 from the Court in light of their respective schedules. Accordingly, the United States respectfully
12 requests that the Court grant the requested stay. The proposed order follows, which would allow the
13 United States 60 days after the government reopens to file its response and would allow the Petitioners
14 14 days after that to file their reply.

15 9. The Petitioners and the United States jointly request that the Court maintain the March
16 20, 2019, date on the Court's calendar as a status hearing. The Petitioners and the United States have

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1 agreed to confer within one week of the government's filing in order to come to an agreement on a new
2 proposed motion hearing date.

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4 IT IS SO STIPULATED.

5 Respectfully submitted,
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7 DAVID L. ANDERSON
8 United States Attorney

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10 /s/
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12 KYLE F. WALDINGER
13 Assistant United States Attorney

14 LAURA-KATE BERNSTEIN
15 Trial Attorney

16 LOUISA K. MARION
17 Senior Counsel
18 Department of Justice

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20 Dated: January 25, 2019

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22 /s/
23

24 JENNIFER STISA GRANICK
25 RIANA PFEFFERKORN

[PROPOSED] ORDER AS MODIFIED

Pursuant to stipulation, IT IS HEREBY ORDERED THAT:

1. This case is STAYED until after the partial shutdown of the federal government has ended and appropriations to the Departments of Justice have been restored.
2. The United States' response to the Petitioners' Motion for *De Novo* Determination of Dispositive Matter Referred to Magistrate Judge shall be due March 27, 2019. ~~60 days after the first date that the relevant appropriations have been restored and the partial shutdown ends~~. The Petitioners' reply, if any, shall be due 14 days after the United States files its response.
3. The March 20, 2019, date will remain on the Court's calendar as a status date rather than a motion hearing date.
4. The Petitioners and the United States are directed to confer ~~within no later than~~ one week before the status hearing of the government's filing in order to come to an agreement with respect to a new proposed motion hearing date.

SO ORDERED.

Date: January 25, 2019


HON. PHYLLIS J. HAMILTON
United States Chief District Judge